Ancient Banking, Modern Crimes

How Hawala secretly transfers the finances of criminals and thwarts existing laws

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1. INTRODUCTION

Hawala, an ancient banking system that originated in the Middle East and South Asia, has spread around the world. Secretive by nature, hawala remains a mystery to most people outside of the ethnic communities that use it. It is fast, inexpensive, reliable, convenient, and, most notably, discreet. These qualities have earned hawala many legitimate customers, not to mention money launderers and terrorist financiers.

Since its transactions leave little or no trace, hawala bedevils financial auditors and law enforcement officials. It also poses considerable challenges to existing legal and regulatory regimes on money laundering and terrorist financing. These regimes rely upon factors that hawala usually lacks, namely detailed records, registration with the government, and connections to mainstream banking. Accordingly, some law enforcement efforts against hawala will fall short. Even so, there are opportunities for governments to exploit hawala's minimal connections with mainstream financial institutions and to promote alternative remittance systems that are subject to oversight.

Section 2 of this paper examines the hawala system, particularly how it operates and the reasons for its enduring popularity. Section 3 analyzes the role of hawala in money laundering and terrorist financing crimes. Section 4 outlines and criticizes the legal and regulatory regimes of the United States and elsewhere that target hawala and its related criminal activity. Section 5 presents strategies for curtailing the illegal use of hawala. Section 6 summarizes the article, and concludes with remarks about the challenges posed to law enforcement authorities by hawala.

2. WHAT IS HAWALA?

Hawala serves as an alternative remittance system. It is one of the "financial services, traditionally operating outside the conventional financial sector, where value or funds are moved from one geographic location to another." [1] That mundane definition obscures an ancient and mysterious system which functions apart from, or parallel to, the banking and financial systems that exist in the developed world. [2] In fact, hawala transfers money without actually moving it. Some of the other alternative remittance systems are hundi, [3] fai chen, [4] and the black market peso exchange.[5]

2.1. An Example of a Hawala Transaction

Consider the following scenario, tailored to reflect the ethnic communities (and their needs) that tend to use hawala. [6] Fareed, a Pakistani man working in Los Angeles, would like to send $1,000 of his savings to his extended family in Islamabad. The bank requires that he open an account first. It will charge him for rupees at the official exchange rate. Courier services, more reliable than surface mail, cost extra. The process might be completed within a week.

Frustrated by the cost and hassle of this proposed transaction, Fareed approaches Khalid, a member of the local Pakistani community. Khalid owns a jewelry store, but on the side he works as a hawaladar, or hawala broker. He charges a modest two percent commission and uses a more favorable exchange rate than the bank. Delivery is free.

Fareed chooses to do business with Khalid instead of the bank. He gives Khalid the $1,000. Using e-mail, Khalid contacts Nawaz, a fellow jeweler and hawaladar that he knows in Islamabad. Fareed's family then provides a prearranged password to Nawaz, who gives them the converted rupees (minus the commission). The whole process is complete within a day.

In this isolated transaction, no money actually traveled between the United States and Pakistan. Instead, one hawaladar, Nawaz, entered into debt on behalf of another, Khalid, using funds that were already in Pakistan. Fareed's

transaction is just one of many in the multilayered community of hawaladars that spans the globe, knit together by social connections and trust. In the absence of trust, the system would collapse and financial systems based on other principles would fill the void. Nawaz, for instance, must trust that Khalid will settle his debt one day, assuming that Nawaz did not already owe Khalid for some previous debt. By providing funds to Fareed's family (and others) on behalf of Khalid, Nawaz might be settling his debt to him. In this case, hawala serves as a one-sided transaction, gradually eroding one hawaladar's debt to another.

Another plausible scenario is that Khalid and Nawaz are engaged in an ongoing business relationship, so hawala debt, along with other debts, will shift back and forth over time. This tends to require a more formal process of account balancing using conventional bank transfers, gold and precious gem smuggling, and printed currency shipments. [7] Invoice manipulation (a customs violation [8]) could also obscure hawala transfers. [9] Khalid could settle his debt from Fareed's transaction by "underinvoicing" a shipment of jewelry to Nawaz. For instance, Khalid could send Nawaz $3,000 worth of jewelry but only charge him $2,000. The $1,000 difference in price would settle Khalid's hawala debt to Nawaz. The process also works in reverse. "Overinvoicing" could be used to send money to the United States. For instance, Khalid could send Nawaz $2,000 worth of jewelry but charge him $3,000. When Nawaz pays for the merchandise, $1,000 enters the United States covertly.

Due to its flexible nature, hawala can accommodate multiple parties, and is only limited by the social connections that sustain it. Indeed, more than two hawaladars may work together at any given time, transferring debt amongst themselves. For instance, Nawaz may owe money to a third hawaladar. Khalid could settle his debt to Nawaz by paying the third hawaladar directly. Though the hawala system can accommodate complex relationships such as this, it rests upon basic principles of debt assignment. From the perspective of the individual customer, such as Fareed, hawala transfers money without actually moving it.

2.2. A Portrait of a Hawaladar

When questioned by outsiders, hawaladars sometimes disavow their profession or refuse to discuss it. [10] As a result, piercing the veil of secrecy around hawala has presented a challenge for law enforcement. [11]

However, consider this insider's account of the hawala system. A hawaladar, Rahim Bariek, testified about his business before the U.S. Senate's

Subcommittee on International Trade and Finance in 2001.[12] His testimony shed light on the hawala system. Bariek's hawala business, run as a second job, served between 200 and 300 customers in Northern Virginia near Washington, D.C. His customers made monthly transfers to Pakistan worth between $20 and $400. Family members typically relied on these funds as supplemental income for housing and food expenses. Bariek also processed larger hawala transfers, valued between $1,000 and $5,000 for occasions such as weddings and funerals. His business terms resembled those of other hawaladars. He charged a five percent commission, delivered within twenty-four hours, and required a password or identification to finalize the transaction.

Significantly, Bariek only transferred funds on behalf of families that he knew personally. He regarded hawala as a humanitarian enterprise: "The money I receive in the United States never goes directly to Pakistan. But it does get to the families in Pakistan [that] need it." [13] He had no qualms about complying with banking laws.

2.3. Enduring Popularity from Antiquity to the Present

The hawala system, which likely predates the Western banking system, originated in the Middle East and South Asia during ancient times. [14] It means "change" and "transform" in Arabic. [15] When the Hindi language incorporated the word, it also began to connote "trust," a principal quality of hawala to this day. [16] The system gained favor among Arab traders who used it to spare themselves the inconvenience of carrying large amounts of money, and to limit the risk of robbery on the Silk Road. [17] Religion has also played a role in the popularity of hawala. Muslims have an obligation to give alms to the needy, and hawala helps transmit these funds on their behalf. [18]

Hawala is still widely used in South Asia and the Middle East. [19] For instance, hawala brokers in Pakistan, India, and the United Arab Emirates ("UAE") have large customer bases. Indeed, a city-state of the UAE, Dubai, serves as one of the world's clearinghouses for hawala transactions. [20] In the United States and elsewhere, immigrant communities from those regions have brought their preference for hawala with them. [21]

Due to the secretive nature of hawala, few statistics exist about its use. Using the latest figures available, Interpol, an international police organization, estimated that in 1998, the amount of money in India's hawala system (which is illegal [22]) totaled $680 billion. [23] That amounts to 40% of the

country's Gross Domestic Product, but estimates have ranged as high as 50%.[24] In Pakistan, where it is also illegal, [25] hawala has supposedly represented the country's largest source of hard currency, an estimated $5 billion per year, [26] though recent estimates have also ranged from $2 billion to $3 billion per year. [27] Individual transactions have reached as high as $10 million. [28]

Contemporary hawala grew as a modern financial system due to a number of complex sociopolitical and economic factors. First, the 1970s ushered in an era of oil wealth for the Middle East, and many Islamic banks emerged. [29] Second, some of hawala's growth may be attributed to gold smuggling that took place between the Middle East and South Asia in the 1960s. [30] At the time, Indian and Pakistani expatriates working in the Middle East needed a system to transmit funds back home to their families. [31] Essentially, the expatriates "paid" for the gold sold in South Asia by sending their wages via hawala. [32] As David Nissman explains it, "[t]he South Asians who held the proceeds for the gold sales then gave the money to the families of the wage earners while keeping their share of the profits from the gold smuggling." [33]

Third, financial systems in the developing world only began to modernize after World War II and government intervention has encumbered the modernization process. [34] Professor Tarik Yousef attributes this to "repressive financial policies, excessive taxation, foreign exchange and trade restrictions and a banking system that is driven by the needs of the governments." [35] As a result, the Western-style financial system has not gained much traction in the Middle East. Given these economic conditions, cash has remained the preferred financial medium for many people in the Middle East. [36]

Lacking viable alternatives, people have relied upon hawala, not mainstream banking, to transfer their cash. [37] In the developing world, hawala possesses qualities that wire transfers lack. First, hawala transfers cost much less than conventional wire transfers. [38] Western Union charges $22 to transfer $200 from Karachi, Pakistan to New York City. [39] In comparison, a competing hawaladar charges a mere ten dollars. [40] Hawala commission rates also tend to be modest, orie or two percent for a transaction in Afghanistan, for instance. [41]

Second, hawala transfers take place quickly. Modern-day technologies such as telephones, e-mail, and faxes tie the hawaladar community together. [42] Some hawaladars advertise that they can complete a transfer in two hours, but most do so within two days. [43] For instance, transfers to Kabul from Dubai or London take six to twelve hours. [44] In comparison, a conventional wire transfer might require a week. [45]

Third, the trust element of hawala has made the system very reliable. [46] In comparison, wire transfers are occasionally lost or stolen in transit. [47] International aid organizations have relied upon hawala to deliver funds to the needy in Afghanistan, and they have expressed general satisfaction with the remittance services provided. [48]

Fourth, hawala is sometimes the only way for poor people or people in remote areas to send and receive funds. [49] In comparison, financial institutions in the developing world gravitate around large cities and cater to governments and the wealthy. [50]

Fifth, hawala requires less bureaucracy. [51] For instance, a bank would require formal identification, such as a social security number, to initiate the transfer process, whereas hawala relies upon personal relationships and connections. [52] This appeals to people who lack formal identification or wish to conceal their immigration status, for instance. [53]

Sixth, hawala does not create a detailed paper trail, if it yields a paper trail at all. [54] This quality makes hawala an attractive medium for illicit transactions, such as terrorist financing [55] and the evasion of taxes, [56] exchange controls, [57] and import/export duties. [58] In comparison, banks and other financial institutions maintain exhaustive records, which facilitate investigations. The anonymity of hawala, and its allure for criminal elements, will figure prominently in this Comment.

1. Financial Action Task Force on Money Laundering, Combating the Abuse of Alternative Remittance Systems: International Best Practices 1 (June 20, 2003), available at http://www.fatf-gafi.org/dataoecd/32/15/34255005.pdf.

2. See Patrick M. Jost & Harjit Singh Sandhu, Interpol, The Hawala Alternative Remittance System and Its Role in Money Laundering (Jan. 2000), at http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/hawala/ default.asp (describing alternative remittance systems).

3. Hundi is essentially the same system as hawala. The term hundi is sometimes used in Pakistan whereas hawala is used in India. Patrick Jost and Harjit Sandhu note that:

The word hundi comes from the Sanskrit root meaning “collect.” In India, one of its most common meanings is for the collection box found in a Hindu temple. In addition to this, it also has the same meanings as hawala: bill of

exchange, promissory note, trust, reference and the alternative remittance system.

Id. app. A.

L.C. Jain defines hundi as "a written order-usually conditional-made by one person on another for the payment, on demand or after a specified time, of a certain sum of money to a person named therein." L.C. JAIN, INDIGENOUS BANKING IN INDIA 71 (1929).

4. The general principles of hawala originated in China during the Teng (T'ang) Dynasty. Growth in the tea trade between the south and the capital made it necessary to develop a more convenient exchange method. The method which emerged was called "fai chen," meaning "flying money." Courts received payments from southern tea merchants. The courts then issued certificates to the merchants. Upon arriving home, the merchant could redeem the certificate for payment. Thanks to this system of "flying money," neither the government agents nor the merchants had to travel long distances with money in their possession. Alan Lambert, Underground Banking and Financing of Terrorism, 15 Fla. J. Int'l L. 9, 13 (2002). The T'ang Dynasty lasted from 618-907 A.D. Encyclopedia Britannica Online, Tang Dynasty, at http://www.britannica.com/ebc/article?tocId=9380219 (last visited Apr. 1, 2005). In China, this hawala-type system is also called "chop" or "chit." See Jost & Sandhu, supra note 2 (describing the Chinese system).

5. The U.S. Customs Services describes the black market peso exchange as "a complex system currently used by the Colombian cartels to launder billions of dollars of drug money each year." In particular, "[t]he peso broker uses contacts in the United States to place the drug dollars he purchased from the cartel into the U.S. banking system. The peso broker, still operating in Colombia, now has a pool of narcotics-derived funds in the U.S. to 'sell' to legitimate Colombian importers." U.S. Customs Service, Black Market Peso Exchange: A Trade Based Money LaUndering System (June 1999), available at http://www.customs.ustreas.gov/ImageCache/cgov/content/publications/pesos_2epdf/v1/pesos.pdf.

6. The hawala transaction example was adapted from the following sources: Hawala and Underground Terrorist Financing Mechanisms: Hearing Before the Senate Subcomm. on Int'l Trade and Fin., 107th Cong. 45-49 (2001) [hereinafter Hawala testimony] (statement of Patrick Jost, SRA International); LISA C. CARROLL, INTERPOL, Alternative Remittance Systems Distinguishing Sub-Systems of Ethnic Money LaUndering in Interpol Member Countries on the Asian Continent (2000), available at http://www.interpol.com/Public/FinancialCrime/MoneyLaundering /EthnicMoney/

default.asp; FinanCIAL ACTION TASK FORCE ON Money LaUndering, Report on Money Laundering Typologies 2002-2003, at 7 (2003), available at http://www.fatf-gafi.org/dataoecd/29/33/ 34037958.pdf; U.S. GEN. Acc. Off., No. GAO-04-163, Terrorist Financing: U.S. agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms 18 (Nov. 14, 2003), available at http://www.gao.gov/new.items/d04163.pdf; Christine Howlett, Investigation & Control of Money Laundering via Alternative Remittance & Underground Banking Systems 5 (Apr. 2001), available at http://www.churchilltrust.com.au/Fellows%20Reports/Howlett %20 Christine%202000.pdf; Mian Ahad Hayaud-Din, The Hawallah Network: Culture and Economic Development in Afghanistan, 78 Int'l. Soc. Sci. Rev. 21, 21 (2003); Jost & Sandhu, supra note 2; Michelle Cottle, Eastern Union, New Republic, Oct. 15, 2001, at 24 .

7. See Financial Action Task Force on Money Laundering, Report on Money Laundering Typologies 2002-2003, supra note 6, at 19-24 (reporting on methods of money laundering); Financial Action Task Force on Money Laundering, Report on Money Laundering Typologies 1999-2000, at 6 (Feb. 3, 2000) (describing the balancing of accounts between hawala brokers), available at http://www1.oecd.org/fatf/pdf/TY2000_en.pdf; Samuel Munzele MaImbo, The Money Exchange Dealers of Kabul: A Study of the Hawala System in Afghanistan 12 (World Bank, Working Paper No. 13, 2003) (discussing the usage of bank transfers by hawaladars), available at http://www-wds.worldbank.org/ servlet/WDSContentServer/WDSP/ IB/2003/10/16/000090341_20031016085357/ Rendered/ PDF/269720PAPER0Money0exchange0dealers.pdf (last visited Apr. 1, 2005).

8. 18 U.S.C. § 545 (2000).

9. See United States v. Ahmad, 213 F.3d 805 (4th Cir. 2001) (describing hawala's role in an invoice manipulation scheme).

10. See Cottle, supra note 6 (describing the reluctance of hawala brokers to discuss their profession with the public).

11. See id. (discussing U.S. problems with hawala infiltration).

12. Hawala testimony, supra note 6, at 42 (statement of Rahim Bariek, Bariek Money Transfer). For more profiles of hawaladars, see MAIMBO, supra note 7, at 11.

13. Hawala testimony, supra note 6, at 43 (statement of Rahim Bariek, Bariek Money Transfer).

14. Lambert, supra note 4, at 12.

15. Jost & Sandhu, supra note 2, app. A.

16. Id. There are other meanings of the word. In Urdu, it means “reference.” Alan Lambert also provided a “non-Arabic Muslim phrase” in which it means “transfer of money between two persons through a third person.” Lambert, supra note 4 , at 13 .

17. Douglas Frantz, Ancient Secret System Moves Money Globally, N.Y. Times, Oct. 3, 2001, at B5; Lambert, supra note 4, at 13.

18. See S.A. AlI, SOCIAL AND ECONOMIC ASPECTS OF THE ISLAM OF MOHAMMED 87-89 (1993) (describing the Islamic view on greed and charity).

19. See Jost & Sandhu, supra note 2 (describing how hawala is still used around the world); Nikos PAssas, Informal Value Transfer Systems and Criminal Organizations: A Study into So-Called Underground Banking Networks (1999), available at http://usinfo.state.gov/eap/img/assets/4756/ivts.pdf (describing the prevalence of hawala).

20. See Jost & Sandhu, supra note 2 (explaining the role of the UAE in hawala networks). Great Britain and Switzerland are other major hawala financial centers.

21. Hawala testimony, supra note 6, at 44 (statement of Tarik M. Yousef, Professor, Georgetown University).

22. See Financial Action Task Force on Money Laundering, Report on Money Laundering Typologies 1999-2000, supra note 7 (stating that the use of hawala is illegal in India); Scott Baldauf, The War on Terror’s Money, Christian SCI. MONITOR, July 22, 2002, at 1 (describing hawala as a major violation of Indian foreign exchange laws); JOST & SANDHU, supra note 2 (“It is, however, possible to state ‘hawala is illegal in India and Pakistan’ with nearly complete accuracy.”).

23. $ See Baldauf, supra note 22 (giving financial figures on hawala traffic).

24. Id.; FinANCIAL Action TASK FORCE ON MONEY LAUNDERING, FinANCIAL Action Task Force on Money Laundering 1999-2000, supra note 7 (reporting financial figures on hawala traffic).

25. See JOST & SANDHU, supra note 2 (explaining the legal status of hawala in Pakistan).

26. Robert Looney, Hawala: The Terrorist’s Informal Financial Mechanism,

MIDDLE E. Pol'Y, Spring 2003, at 164, 166.

27. Fasih Ahmed, Antiterror Measure Helps Pakistan, WALL St. J. Eur., Oct. 21, 2003, at A3.

28. See, e.g., Matt Miller, Underground Banking: An Illegal Money Transfer Network Keeps Business Moving in Troubled Asian Economies, InStitUTIONAL InVESTOR, Jan. 1999, at 32, 33 (1999) (reporting a hawala dealer's story that he witnessed a $10 million transfer).

29. Lambert, supra note 4, at 14.

30. David Marshall Nissman, Hawala, U.S. ATT'YS' Bull., May 2002, at 13, 17, available at http://www.usdoj.gov/usao/eousa/foia_reading_room/usab5003. pdf.

31. $ Id.

32. Id.

33. Id.

34. Hawala testimony, supra note 6, at 44 (statement of Tarik M. Yousef, Professor, Georgetown University).

35. $ Id.

36. Id.

37. Id.

38. Ahmed, supra note 27.

39. Id.

40. Id.

41. See MaImbo, supra note 7, at 27 (providing examples of the commissions charged by hawala brokers).

42. Mohammed El-Qorchi, Hawala: How Does This Informal Funds Transfer System Work, and Should It Be Regulated?, Fin. & Dev., Dec. 2002, at 31, 32.

43. See Jost & Sandhu, supra note 2 (stating that a hawala remittance takes place within two days); Hawala testimony, supra note 6, at 47 (statement of Patrick Jost, SRA International) (stating that hawala transfers usually take

place in twenty-four hours).

44. MaImbo, supra note 7, at 5.

45. Jost & Sandhu, supra note 2.

46. Hawala testimony, supra note 6, at 47 (statement of Patrick Jost, SRA International). Jost notes that "[h]awaladars form an extended community, and it is rare for them to defraud one another or their clients. In the rare cases where this has happened, other Hawaladars are known to make good on the debts of their colleague." Id.

47. See, e.g., JOST & SANDHU, supra note 2 (describing how an international wire transfer was lost in transit); Hawala testimony, supra note 6, at 42 (statement of Rahim Bariek, Bariek Money Transfer) (recounting a personal incident of a lost money transfer to Pakistan through a conventional bank).

48. MaImbo, supra note 7, at 11.

49. Hawala testimony, supra note 6, at 44 (statement of Tarik M. Yousef, Professor, Georgetown University).

50. Id.

51. JOST & SANDHU, supra note 2.

52. Id.

53. Id. Jost and Sandhu cite the example of a person in the United States whose student visa has expired.

54. See MaImbo, supra note 7, at 12 (describing the limited paper trail of hawala). For an example of the limited paper trail created by hawala transactions, see Sanjay Kapoor, Bad Money, Bad Politics: The Untold Hawala Story (1996).

55. See Hawala testimony, supra note 6, at 41 (statement of John Varrone, Assistant Commissioner, Office of Investigations, U.S. Customs Service) (discussing the link between hawala and terrorism); JOST & SANDHU, supra note 2 (expounding on the role of hawala in terrorist financing).

56. See World Bank, Informal Funds Transfer Systems in the APEC Region: Initial Findings and a Framework for Further Analysis 9 (2003) (describing the role of hawala in tax evasion).

57. El-Qorchi, supra note 42, at 33.

58. Howlett, supra note 6, at 6.

3. HAWALA'S ROLE IN MONEY LAUNDERING AND TERRORIST FINANCING

As discussed above, hawala's many qualities have attracted a large following of customers. The vast majority of their transactions are legitimate, but a small percentage of them facilitate illicit activity. Hawala itself may be illegal in certain countries, such as India and Pakistan, but this Comment concerns itself with hawala's role in other offenses. Criminals value hawala's reliability, speed, and low cost, not to mention its relative anonymity. The limited paper trail that it creates allows criminals to transfer funds between, or within, countries discreetly. By taking advantage of this anonymity, they may launder funds derived from criminal acts or channel funds in support of criminal acts.

First, hawala may be used to launder funds derived from criminal acts. These offenses run the gamut: narcotics trafficking, smuggling, and customs or tax violations, to name a few. [1] Hawala facilitates money laundering in three stages: by discreetly introducing criminals' funds into the financial system ("placement"); manipulating them to appear legitimate ("layering"); and making them available for further use ("integration"). [2] At each stage of the process, hawala erodes the dirty money trail, especially if the transactions cross borders. By the time the funds have shifted between multiple parties in multiple countries, leaving a minimal paper trail (if that), the dirty money appears clean.

Second, hawala may be used to channel funds in support of criminal acts. Terrorist groups notably have relied upon it to allocate funds, whether clean or dirty, for organizational and operational expenses. [3] As it does for money laundering, hawala effectively limits the paper trail that these transfers would otherwise create in a conventional banking system. In this case, not only are the funds themselves an issue; so is the legality of the conduct that they support. Jeff Breinholt, of the U.S. Department of Justice, distinguished terrorist financing from conventional money laundering, referring to the

former as “reverse money laundering” and “money soilage.” [4] In such situations, money becomes “dirty by virtue of its application and use.” [5]

The Financial Action Task Force on Money Laundering (“FATF”), a subsidiary of the Organization for Economic Cooperation and Development (“OECD”), provided an example of hawala’s use in terrorist financing:

A recent successful money laundering investigation concerning a bureau de change operation uncovered evidence of the laundering of terrorist funds, derived from international smuggling. Certain similarities existed with the hawala system in that there were substantial cash payments into the bureau de change which were not reflected in its principal books and records nor were they reflected in the bureau de change’s bank account. The bureau de change held a huge cash reserve which was drawn upon, when necessary by members of the terrorist organisation. In addition, the bureau de change would remit payments from its legitimate bank account to entities in other jurisdictions, on behalf of the terrorist organisation, which upon investigation was shown to be payment for contraband. [6]

As for al Qaeda, investigators have established that hawala transactions did not supply the financing for the September 11th attacks. [7] Currency importation and conventional banking transfers likely supplied the funds. [8] However, al Qaeda used hawala to remove its funds from Afghanistan as U.S.-led forces swept through the country in 2001.[9] It also used hawala to help finance the American Embassy bombings in Kenya and Tanzania in 1998.[10] Al Qaeda continues to use the hawala system to transfer its funds around the globe, [11] as do other terrorist groups. [12]

Hawala offers speed, low cost, reliability, and relative anonymity. These qualities appeal to legitimate and illegitimate customers alike. Money launderers and terrorist financiers have used hawala, and will continue to use it as long as it remains available to them and meets their needs.

1. See Financial Action Task Force on Money Laundering, Report on Money Laundering Typologies 1999-2000, supra note 7 (illustrating the role of hawala in criminal activity).

2. $ See P. Jayaseelapandian, Understanding Money Laundering, Hindu, Oct. 17, 2000 (outlining the process of laundering money); JOST & SANDHU, supra note 2 (describing the role of hawala in money laundering).

3. $ See Nissman, supra note 30, at 16-17 (describing the role of hawala in terrorist financing).

4. $ Jeff Breinholt, Terrorist Financing, 51 U.S. Att'ys' Bull., No. 4, July 2003, at 33.

5. $.

6. Financial Action Task Force on Money Laundering, Report on Money LAUNDERING TYPOLOGIES 2002-2003, supra note 6, at 9.

7. See National Commission on Terrorist Attacks Upon the United States, Monograph on Terrorist Financing: Staff Report to the Commission (2004), at 139-40 (revealing that no hawala or other informal transfer mechanisms were used to send money to the United States), available at http:// www.9-11commission.gov/staff_statements/911_TerrFin_Monograph.pdf.

8. Id, at 131-144; The PATRIOT Act Oversight: Investigating Patterns of Terrorist Financing: Hearing Before the U.S. House Subcomm. on Oversight and Investigations, 107th Cong. 9-11 (2002) (statement of Dennis Lormel, Chief, Financial Crimes Section, Criminal Investigations Division, Federal Bureau of Investigation), available at http:// financialservices.house.gov/ media/pdf/021202dl.pdf.

9. See Douglas Farah, Al Qaeda's Road Paved With Gold, WASH. POST, Feb. 17, 2002, at A1 (exploring the role of hawala in al Qaeda's finances).

10. See Timothy O'Brien, U.S. Focusing on Dubai as a Terrorist Financial Center, N.Y. Times, Oct. 5, 2003, at 13 (addressing the role of hawala in the 1998 U.S. Embassy bombings).

11. Id.

12. See Financial Action Task Force on Money Laundering, Report on Money Laundering Typologies 2002-2003 supra note 6, at 8-9 (describing the role of hawala in terrorist financing).

4. CURRENT LEGAL AND REGULATORY REGIMES

The money laundering and terrorist financing schemes described above run afoul of the laws and regulations of many countries, including the United States. However, these prohibitions tend to focus on the bureaucratic financial system, which maintains detailed records of its transactions. Hawala, in contrast, generates a limited paper trail, if that. As a result, many transactions conducted via hawala elude detection and investigation by law enforcement.

Below is a sample of the laws and regulations that countries use to address money laundering and terrorist financing, some of which focus on hawala specifically. In each case, the laws and regulations rely upon connections to mainstream financial institutions, government licensing, and detailed records, which hawala often eschews, to perform effectively.

4.1. The United States

The United States has established a legal regime and an investigative infrastructure to regulate hawala, as well as other systems of financial transfers. As for the legal regime, Title III of The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ("USA PATRIOT") Act of 2001[1] addresses money laundering and terrorism financing. The Act amended the Bank Secrecy Act ("BSA") [2] to treat "informal money transfer system[s]," such as hawala, as financial institutions. [3] The recordkeeping rules that apply to licensed money transmitters also apply to informal systems. In particular, these "informal money transfer system[s]" must register as "money transmitting businesses."[4] Also, the USA PATRIOT Act criminalizes the knowing transfer of funds that are derived from crimes or are to be used in crimes. [5]

Under the authority of the Secretary of the Treasury, hawala is subject to money laundering regulations, namely the obligation of hawaladars to file Suspicious Activity Reports ("SAR"). On December 21, 2001, the U.S.

Treasury Department's Financial Crimes Enforcement Network ("FinCEN") notified certain "money services businesses" ("MSB"), namely "money transmitters, and issuers, sellers, and redeemers of money orders and traveler's checks," that an administrative rule to report suspicious transactions would take effect on January 1, 2002.[6] An MSB must file the report no later than thirty calendar days from the date that it detected suspicious activity. [7]

Using such laws and regulations, U.S. investigative authorities have had some success in registering hawala businesses. As of the release of the 2003 National Money Laundering Strategy, "well over 14,000 MSBs" had registered with FinCEN since the deadline of December 31, 2001.[8]

The U.S. government has raided numerous illegal moneytransmitting businesses, some of which are hawala businesses, but comprehensive data on the raids is unavailable. For instance, from October 2001 until May 2004, federal agents raided seventeen money-transmitting businesses in the Washington, D.C. metro area. [9] These businesses allegedly operated without licenses. [10] Three of them were suspected by law enforcement authorities of sending funds to state sponsors of terrorism, but no charges had been filed as of May 2004.[11] Since the passage of the USA PATRIOT Act, U.S. authorities have arrested more than eighty people for illegally transferring funds to countries such as Iraq and Pakistan. [12]

The government's investigation of Al Barakaat, while technically not a hawala investigation, illustrates the challenges facing law enforcement authorities as they try to pierce the veil of hawala. Al Barakaat was a large money-transfer business that was allegedly used to transfer terrorist financing. It differentiated itself from the "pure" form hawala by using the mainstream financial system to transfer value between the sender and the recipient. [13] As such, it was not a hawala broker in the technical sense. Nonetheless, Al Barakaat shared some qualities with hawala, namely international transfers and the large settling transactions that take place between hawala brokers. [14] Accordingly, Al Barakaat sheds light on the challenges facing the U.S. government as it attempts to investigate hawala brokers.

On November 7, 2001, the U.S. Treasury Department froze the assets of Al Barakaat. [15] Operation Green Quest is a multiagency task force led by the U.S. Customs Service that also includes the Internal Revenue Service, the Secret Service, Treasury's Office of Foreign Asset Control, and FinCEN. It launched a "coordinated enforcement action" against Al Barakaat, raiding offices in six cities: Boston, MA; Falls Church, VA; Alexandria, VA; Columbus, OH; Minneapolis, MN; and Seattle, WA. [16] The government closed eight Al

Barakaat businesses and subsequently raided other firms affiliated with it. [17]

Al Barakaat emerged in 1989 and ultimately spanned forty countries. [18] The firm operated 60 offices in Somalia and 127 offices in other countries. [19] It utilized modern technology to offer wire transfer services, as well as telecommunications and currency exchange services. [20] U.S. investigators suspected that Al Barakaat's founder, a reputed associate of Osama bin Laden, used this infrastructure to transfer funds and information to terrorist cells. [21] The firm piqued the interests of investigators after Al-Itihaad, an Islamist group in Somalia, was placed on a list of groups with frozen assets. [22]

Senior officials of Al Barakaat denied wrongdoing. [23] In part, the firm legitimately served Somalis in the United States, who used it to transfer funds to relatives in their homeland. [24] The raids placed Somali remittances in jeopardy, a troubling scenario since the country relies upon remittances for a large part of its income. [25]

Ultimately, U.S. authorities never found direct evidence linking Al Barakaat with terrorism. [26] Criminal charges were never filed against Al Barakaat in the United States. [27] U.S.-based Al Barakaat brokers filed a suit challenging the seizure of their funds, much of which was unfrozen and returned. [28]

The Al Barakaat case illustrated the challenges facing the U.S authorities as they attempt to penetrate and investigate a moneytransmitting business, which can elude detection more readily than a conventional financial institution. However, illegal hawala operations pose even greater challenges to law enforcement than those posed by Al Barakaat. As such, the Al Barakaat case is not an investigative model that U.S. authorities will be able to follow, or should follow, consistently.

Al Barakaat, thanks to its size, cast a large shadow. Moreover, it interacted with conventional financial institutions to transact business. According to U.S. Attorney David Nissman, since the "[Al Barakaat] network used financial institutions, law enforcement was able to discover the transactions through the generation of [SARs] produced by the banks pursuant to their obligations under the [BSA]."[29]

However, hawalas will not necessarily raise so many red flags for investigators. First, hawaladars, even legitimate ones, might not be willing to register as an MSB with FinCEN, or even know about the federal regulations. Illegal hawaladars would have even less incentive to register. One investigator, Alan Lambert, referred to a former Clinton Treasury official's quote that, "even if you find a hawala broker to interview, you'll be doing

better than the FBI."[30]

Second, irrespective of registration requirements, hawala transactions create a minimal paper trail. Thus, even if investigators were to penetrate a hawala operation, they would not necessarily determine the brokers' senders and recipients. [31]

Third, investigators rely upon financial institutions to file SARs that focus attention on suspicious accounts used by hawala brokers. If hawalas avoid these institutions altogether (by using alternate means of balancing accounts) or do not generate enough activity to arouse suspicion, then no SARs will be filed. These factors represent challenges for subsequent investigations. By being so prominent and visible, Al Barakaat might have been low-lying fruit. Illegal hawalas could prove harder to catch.

4.2. Foreign Law

Consider the laws and regulations of countries that substantially use hawala to transfer funds. According to one observer, the UAE (namely, its city-state of Dubai), India, and Pakistan "dominate the world market."[32] According to Western intelligence sources, these countries also "form[ ] the backbone of a system that abets terrorism."[33]

Each country has had some success in subjecting the hawala industry, as well as other financial systems, to government oversight. In some cases, they have even dismantled illegal hawala operations. Nonetheless, since the laws and regulations rely primarily upon detailed records, connections with mainstream financial institutions, and government registration, hawala still presents a challenge to investigators.

4.2.1. The United Arab Emirates

The UAE, a federation of seven city-states along the Persian Gulf, has become a major financial center at the crossroads of the Middle East. Approximately fifty banks operate there, as do about eighty hawala brokers. [34] Indeed, the UAE might be the largest clearinghouse for hawala transactions in the world. [35]

The UAE earned a reputation as a favored hub for terrorist funding due to its lenient financial reporting requirements. [36] Banks and other financial institutions did not have to disclose cash deposits. [37] U.S. officials have alleged that half of the financing for the September 11th attacks

(approximately $250,000) was wired from banks in the UAE to al Qaeda operatives in the United States. [38] American authorities have also alleged that banks in the UAE transferred al Qaeda funds for the American Embassy bombings in Kenya and Tanzania in 1998.[39]

In January 2002, the UAE government introduced a money laundering law that imposed disclosure requirements, such as "the obligation for all cash movements of over $550 to be reported."[40] In late 2002, the UAE announced new laws and regulations to impose greater restrictions and scrutiny on its financial system, including hawala. Sultan al-Suwaidi, Governor of the Central Bank, stated that hawaladars would be placed on a central registry. [41]

Also, limits were placed on "the percentage of paid-in capital a bank can lend to a single individual or corporate entity."[42] These reforms were conducted in accordance with directives from the FATF. [43] Notably, in 2002, the U.S. Customs Service opened offices in the UAE, primarily as a base of operations for Operation Green Quest, the same multi-agency financial task force that handled the Al Barakaat investigation. [44]

Bank officials in the UAE reported that from August 2001 to May 2003, 429 reports of suspicious transactions were filed domestically and sent abroad primarily to Canada, Switzerland, Britain, the United States, Portugal, Italy, and Luxembourg. [45] As of October 2003, those suspicious transactions had resulted in 46 active investigations in the UAE. [46]

The United States remains critical of the UAE's legal and regulatory regime, and of its willingness to enforce those provisions. [47] However, it is not clear that the existing laws and regulations would be sufficient even if the authorities vigorously enforced them. The laws of the UAE suffer from the same kinds of shortcomings that undermine U.S. laws on hawala. A reliance on registration and suspicious transaction reports blinds investigators to hawala brokers that fail to register, operate with limited records, and avoid the mainstream financial system.

4.2.2. Pakistan

Hawala is illegal, though quite popular, in Pakistan. [48] Individual transactions have reached as high as $10 million. [49] At some points, hawala was reportedly the country's largest source of hard currency, an estimated $5 billion per year, [50] though recent estimates also have ranged from $2 billion to $3 billion per year. [51]

Pakistani government efforts to curb the use of hawala date back many years.

In the 1980s and 1990s, it used tax-exempt bearer bonds to lure customers away from hawala businesses, and to attract funds from Pakistani expatriates. [52] The country's test of a nuclear weapon in 1998 prompted international condemnation and doubts about the stability of Pakistan, thereby imperiling the bond program. [53] Under the Foreign Exchange (Temporary Restriction) Act of 1998, foreign currency accounts were frozen. [54] Holders could only withdraw funds in rupees at a government-set exchange rate. [55] Faith in banks plunged and hawala's popularity surged once again. [56] Foreign remittances through banking channels fell from $150 million to $50 million per month. [57]

In 2002, Pakistan enacted a law requiring hawala brokers to record their transfers and register with the government. [58] Since then, the government has shut down dozens of unregistered hawalas. [59] In 2003, it established a Financial Intelligence Bureau, which analyzes data on suspicious transactions and serves as a liaison with intelligence agencies, both foreign and domestic. [60] In September 2003, U.S. Treasury Secretary John Snow said that Pakistan had:

> undertaken enormous strides to curb money laundering . . . . Evidence of that is the strong action that has been taken against money laundering and registration and regulation of 'hawala' networks . . . [A]lready the 'hawala' operators and terrorist groups are switching over to using carriers and couriers to pass on cash across the international borders. [61]

Pakistani initiatives to curb the illegal use of hawala, and unregulated hawala in general, have yielded some success. Government officials have credited the crackdown on hawala with enlarging conventional financial channels. [62] By June 2003, remittances through conventional (and traceable) channels had risen from $2 billion to $4.2 billion in one year. [63] Granted, hawala transfers still reached an estimated $2 billion to $3 billion per year. [64] However, these figures represent a $2 billion to $3 billion drop in hawala transactions from a previous estimate of $5 billion per year. [65]

Other factors have also played a role in this reversal of hawala use. As of January 2002, Pakistani hawaladars attributed some lost business to the reporting requirements that closed off Dubai as a "middleman" for transactions. [66] Also, at the behest of the government, foreign exchange companies, such as Western Union, have begun to compete with hawala brokers. [67] Finally, some experts suspect that the surge in transfers reflects the concerns of expatriate Pakistanis about the safety of their money in the United States. [68] In contrast, conventional remittances in India and the UAE have only slightly increased, if at all. [69]

Pakistan has successfully dismantled many illegal hawala brokers and subjected the industry to government oversight. Even so, its laws and regulations suffer from the same kinds of shortcomings that undermine U.S. laws on hawala. The existing laws and regulations on hawala might not be sufficient even if the authorities vigorously enforce them. A reliance on registration and suspicious transaction reports limits the effectiveness of investigators, since some hawala brokers fail to register, operate with limited records, and avoid contact with the mainstream financial system.

4.2.3. India

Hawala is illegal, but very popular, in India. [70] Using the latest figures available, Interpol estimated that in 1998, the amount of money in India's hawala system totaled $680 billion. [71] That amounts to 40% of the country's GDP, but estimates have ranged as high as 50% [72] Interviewees told one author that "hawala runs the country."[73]

Government programs to regulate hawala date back many years. In the 1990s, the Indian government sought to curb hawala use by liberalizing the economy through floating exchange rates and relaxed gold restrictions. [74] Professor Barry Rider remarked that, "[n]o intelligence organization-except the Directorate of Revenue Intelligence in India, perhaps - has ever effectively cracked the system." [75]

In March 1991, New Delhi police officers arrested two Kashmiri militants who were connected to hawala transfers. [76] The subsequent investigation revealed a network of illegal funds totaling almost 650 million rupees (about $14 million). [77] Thirty-eight cabinet ministers (serving and former) were implicated, as were several political parties. [78] Under the Terrorist and Disruptive Activities Act, the government held the suspects in jail for seven years without trial. [79] However, a court excluded a suspect's diary (which contained coded transactions) from evidence, and the government's case collapsed. [80]

In 2003, India enacted the Prevention of Money-Laundering Act, which requires hawala brokers to maintain detailed records about their transactions. [81] Strangely, the Indian law does not explicitly require the filing of suspicious transaction reports, in contrast to U.S. law. [82] India also has a law called the Foreign Exchange Management Act, which regulates cross-border currency transactions. [83]

India's money laundering law on hawala suffers from the same kinds of shortcomings, and perhaps others, that undermine U.S. laws on hawala. A reliance on financial records and registrations hampers investigations, since

some hawala brokers operate with minimal records and limit their contact with the mainstream financial system. India's records-based legal regime suffers even more so because of its failure to provide for suspicious transaction reports.

4.3. International Law

The international community has supported the measures adopted by the UAE, Pakistan, and India. As shown above, the three countries have adopted hawala laws and regulations based on registration, detailed recordkeeping, and suspicious transaction reports. By lending its support to such measures, the international community might have set the reform agenda in countries that have not yet adopted hawala regulations. Some of these countries will likely follow the lead set by India, Pakistan, and the UAE, and adopt the records-based system for regulating hawala.

The FATF's Forty Recommendations, along with its eight Special Recommendations, are the "international standards for combating money laundering and the financing of terrorism."[84] The Forty Recommendations were originally drafted in 1990 in response to the laundering of drug money. They have since evolved to address money laundering in general, as well as terrorist financing. [85]

In October 2001, the FATF adopted eight "Special Recommendations on Terrorist Financing." [86] One of them dealt specifically with alternative remittance systems, which included hawala. [87] As explained in interpretive notes released by the FATF, the recommendation consists of three parts:

> 1. Jurisdictions should require *licensing* or *registration* of persons (natural or legal) that provide money/value transfer services, including through informal systems; (B) Jurisdictions should ensure that money/value transmission services, including informal systems . . . are subject to applicable FATF Forty Recommendations (in particular, Recommendations 10-21 and 26-29) and the Eight Special Recommendations (in particular SR VII); and (C) Jurisdictions should be able to impose sanctions on money/value transfer services, including informal systems, that operate without a license or registration and that fail to comply with relevant FATF Recommendations. [88]

Sections A and C are straightforward. Section B requires more explanation, since it cross-references Recommendations 10-21 and 26-29 (of the Forty Recommendations). [89] Significantly, those recommendations deal with

record-keeping [90] and suspicious transaction reports, [91] among other measures. Section B also crossreferences "SR VII," Special Recommendation Seven. [92] According to the interpretive notes, Special Recommendation Seven:

> aims to ensure that basic information on the originator of wire transfers is immediately available (1) to appropriate law enforcement and/or prosecutorial authorities to assist them in detecting, investigating, prosecuting terrorists or other criminals and tracing the assets of terrorists or other criminals, (2) to financial intelligence units for analysing suspicious or unusual activity and disseminating it as necessary, and (3) to beneficiary financial institutions to facilitate the identification and reporting of suspicious transactions. [93]

As shown above, the Forty Recommendations and the eight Special Recommendations by the FATF epitomize the recordsbased system for hawala regulation. This system is characterized by detailed recordkeeping, registration or licensing, and suspicious transaction reports.

On May 16, 2002, the FATF's records-based approach garnered considerable international support. In the "Abu Dhabi Declaration on Hawala," the governments of almost forty countries agreed to follow the FATF's Forty Recommendations and the eight Special Recommendations, as well as other policies and principles. [94]

4.4. Summary of the Legal and Regulatory Regimes

This Comment has analyzed the hawala laws of the United States, the UAE, Pakistan, and India, as well as the legal regime proposed by the international community. These laws and proposals follow a records-based approach and are characterized by licensing or registration, detailed records, and suspicious transaction reports.

However, hawala, by its very nature, poses a challenge to these legal provisions. First, hawaladars, even legitimate ones, might not be willing to register or obtain a license, assuming that they even know about the law. Second, hawala transactions often generate a vague paper trail that is incoherent to outsiders. Third, investigators rely upon financial institutions to file suspicious transaction reports. If hawalas avoid these institutions altogether (by using alternate means of balancing accounts) or do not generate sufficient activity to arouse the suspicion of banking officials, then

no reports will be filed.

As shown, hawala poses significant challenges for investigators, some of which may be insurmountable. Even so, governments may take certain steps to mitigate these obstacles.

1. Pub. L. No. 107-56, 115 Stat. 272-400 (2001).

2. Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified as amended in scattered sections of 12,15 , and 31 U.S.C.)

3. $ USA PATRIOT Act § 359, 115 Stat. at 328-29. For additional information on the Bank Secrecy Act, see FinANCIAL CRIMES EnFORCEMENT Network, Bank Secrecy Act Requirements, available at http://www.msb.gov/pdf/bsa_quickrefguide.pdf (last visited Mar. 18, 2005).

4. Id. Money services businesses ("MSB") were also required to register with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") by December 31, 2001. In testimony before the U.S. Senate's Subcommittee on International Trade and Finance in 2001, John Sloan, Director of FinCEN, stated that 160,000 to 200,000 entities would be affected by the registration requirements. Eight thousand of these were considered principal transmitters, such as American Express and the United States Postal Service. See Hawala testimony, supra note 6, at 16 (statement of John Sloan, Director, Financial Crimes Enforcement Network).

Many of the states in the United States impose similar requirements upon money transmitters. See, e.g., CAL. Civ. CODE §§ 1789.30-1789.37 (Deering 2005) (requiring a permit to operate a check cashiers business); N.Y. BANKING LAW § 641 (McKinney 2004) (requiring a license for any business selling or issuing checks or engaging in the transmission of money); VA. CODE AnN. § 6.1-371 (Michie 2004) (imposing licensing requirements for businesses engaged in money transmissions).

5. USA PATRIOT Act § 373, 115 Stat. at 274.

6. Press Release, Financial Crimes Enforcement Network, Re: Effective Date for the Suspicious Activity Reporting Requirement for Money Services Businesses Remains January 1, 2002 (Dec. 21, 2001), available at http://www.fincen.gov/sardatemsbs.html.

7. Id.

8. U.S. Dept of the Treasury & U.S. Dept of Justice, 2003 National Money Laundering Strategy 14 (2003), available at http://www.ustreas.gov/press/releases/reports/js10102.pdf. As of September 2002, "well over 10,000" MSB's had registered with the government. U.S. Dept of the Treasury, Contributions by the Department of the Treasury to the Financial War on Terrorism: Fact Sheet 16 (2002), available at http://www.ustreas.gov/press/releases/reports/2002910184556291211.pdf.

9. See Mary Beth Sheridan, U.S. Raids 17 Businesses That Send Cash Abroad, WASH. POST, May 18, 2004, at B1 (discussing raids on money transmitting businesses without licenses that sent millions of dollars abroad).

10. $.

11. $.

12. Id.

13. See National Commission on Terrorist Attacks Upon the United States, supra note 65 , at 68 (contrasting Al Barakaat and hawala).

14. $.

15. Press Release, The White House, President Announces Crackdown on Terrorist Financial Network (Nov. 7, 2001), available at http://www.whitehouse.gov/news/releases/2001/11/20011107-4.html.

16. Hawala testimony, supra note 6, at 7 (2001) (statement of John Varrone, Assistant Commissioner, Office of Investigations, U.S. Customs Service).

17. Id.

18. Bruce Zagaris, The Merging of the Counter-Terrorism and Anti-Money Laundering Regimes, 34 LaW & Pol'y Int'l Bus. 45, 69 (2002).

19. Id.

20. Id.

21. Id.

22. Edward Alden & Mark Turner, Assets Frozen as U.S. Targets Al-Qaeda Financing, Fin. TiMES, Nov. 7, 2001, 2001 WLNR 5710877.

23. Mark Turner, Barakat Pleads Innocent to U.S. 'Terror' Claim, Fin. TiMES, Nov. 12, 2001, at 6; Tim Golden, 5 Months After Sanctions Against Somali

Company, Scant Proof of Qaeda Tie, N.Y. TiMES, Apr. 13, 2002, at A10.

24. Nissman, supra note 30, at 18.

25. Mark Turner, Barakat Telecoms Gateway Cut Off, Fin. TiMES, Nov. 16, 2001, at 15.

26. See National Commission on Terrorist Attacks Upon the United States, supra note 65 , at 80 .

27. Id. at 10.

28. Id.

29. Nissman, supra note 30, at 18.

30. Lambert, supra note 4, at 18.

31. The U.S. General Accounting Office has observed that:

In one case, [the] Drug Enforcement Agency ("DEA") pursued drug smugglers with suspected terrorist links who used hawala to transfer their profits to Lebanon. However, the indecipherable records of the hawala transactions to Lebanon impeded [the] DEA's ability to trace the money once it reached Lebanon. As a result, [the] DEA was not able to ascertain if the smugglers were providing material support to terrorists.

U.S. GEN. ACC. OFF., supra note 6, at 29.

32. Ahmed, supra note 27.

33. O'Brien, supra note 68.

34. See id. (describing the hawala market in the UAE).

35. See Looney, supra note 26, at 165 (discussing hawala systems around the world).

36. See Zachary Abuza, Funding Terrorism in Southeast Asia: The Financial Network of Al Qaeda and Jemaah Islamiya, 25 CONTEMP. S.E. ASIA, No. 2, Aug. 1, 2003, at 170 (explaining hawala's role in financing terrorism).

37. Id.

38. O'Brien, supra note 68.

39. Id.

40. Jon Marks, UAE Strives To Be the Gulf's No. 1, Banker, Sept. 2002, at 179.

41. Robin Allen, UAE to Tighten Rules for 'Terrorist' Cash System, Fin. TiMES, Nov. 6, 2002, at 12. As of October 18, 2003, the UAE government had issued sixtyone certificates to hawala brokers and would soon issue twenty-two more certificates. UAE Defends Hawala System, UAE-The Official Web Site-News, Oct. 18, 2003, http://82.195.132.90/news/default.asp?cntDisplay=50&ID=140.

42. Allen, supra note 111.

43. Id.

44. U.S. Customs UAE Offices Will Track Terror Money, J. COM., Jan. 29, 2003, at WP, 2003 WLNR 1921179.

45. O'Brien, supra note 68.

46. Id.

47. Id.

48. JOST & SANDHU, supra note 2.

49. Miller, supra note 28, at 33.

50. Looney, supra note 26, at 166.

51. Ahmed, supra note 27, at A3.

52. PASSAS, supra note 19, at 63-64.

53. Miller, supra note 28, at 35.

54. Zulfiqar Ali, Govt Plans Law to Curb Money Laundering, Dawn, Mar. 25, 2003, available at http://www.dawn.com/2003/03/25/nat15.htm (on file with the University of Pennsylvania Journal of International Economic Law).

55. Miller, supra note 28, at 32.

56. Id.

57. Id.

58. Asad Cheema, Snow Lauds Pakistan's Efforts to Curb Terror, MoneyLaundering, The DaILY MAIL, Sept. 20, 2003, available at http:// dailymailnews.com /200309/20/news/101.html (on file with the University of Pennsylvania Journal of International Economic Law).

59. Id.

60. Mushtak Parker, Financial War on Terrorism Makes for Uneasy Alliance, THE TiMES (London), Oct. 8, 2003, at 7.

61. M. Aftab, 'Hundi' Not Going for Good: Even Americans Know It, Dawn, Oct. 27, 2003, available at http://www.dawn.com/2003/10/27/ebr4.htm (on file with the University of Pennsylvania Journal of International Economic Law).

62. Ahmed, supra note 27.

63. Id.

64. Id.

65. Looney, supra note 26.

66. Naween Mangi, Pakistan Cripples the Money Movers, Bus. Wk., Jan. 31, 2002, at http://www.businessweek.com/bwdaily/dnflash/jan2002/ nf20020131_6995.htm.

67. Mohiuddin Aazim, Money Changers Not Ready to Go After June 30, Dawn, Oct. 12, 2003, available at http://www.dawn.com/2003/10/12/ ebr3.htm (on file with the University of Pennsylvania Journal of International Economic Law); see also NBP Signs Deal with Western Union, Dawn, Jan. 24, 2003 (discussing the role of Western Union in Pakistan), available at http:// www.dawn.com/2003/01/24/ ebr5.htm (on file with the University of Pennsylvania Journal of International Economic Law); Asif Asrar Usmani, Exchange Companies Ready to Replace Money Changers, ECON. Rev. (Pak.), Jan. 2003, at 9 (describing the role of foreign exchange companies in Pakistan).

68. See Ahmed, supra note 27 (describing the other reasons for the rise in mainstream financial transactions).

69. Id.

70. See financial action Task force on Money laundering, Report on Money Laundering Typologies 1999-2000, supra note 7; Baldauf, supra note 22

(describing the popularity of hawala in India).

71. Baldauf, supra note 22.

72. Id.; FinanCIAL Action TASK FORCE ON Money LaUNDERING, REPORT ON Money Laundering Typologies 1999-2000, supra note 7.

73. PASSAS, supra note 19, at 63.

74. Id.

75. Sarah Toyne and Jeremy Scott-Joynt, Following the Money Trail, BBC NeWs, Nov. 7, 2001, available at http://news.bbc.co.uk/2/hi/business/1553153.stm. For details about the use of hawala in Indian political corruption, see KAPOOR, supra note 54 .

76. Lambert, supra note 4, at 17.

77. Id.

78. Id.

79. Id.

80. Id.

81. India Code, The Prevention of Money-Laundering Act (Act No. 15 of 2003) (India) available at http://indiacode.nic.in/rspaging.asp?tfnm=200315; Srinjay Chakravarti, Business of Dirty Money, The Telegraph (Calcutta), Apr. 1, 2003, available at http://www.telegraphindia.com/1030401/asp/opinion/story_1827091.asp. In contrast, under the Foreign Contributions Regulation Act ("FCRA") of 1976, hawala were not registered, and thus were not regulated. Govt. Moots Plan to Curb Foreign Funds, The Statesman (India), Oct. 4, 2001, 2001 WL 25976587.

82. The Indian law states:

Provided that where the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

INDIA CODE, The Prevention of Money-Laundering Act, supra note 151, at §

12.

For additional information on the law, see Hema Ramakrishnan, Finmin May Limit Reporting Under Money Laundering Act to Rs 10 lakh, ECONOMIC TIMES, Jan. 14, 2003, available at http://economictimes.indiatimes.com/articleshow/421304.cms.

83. India CODE, The Foreign Exchange Management Act (Act No. 42 of 1999) (India), available at http://indiacode.nic.in/rspaging.asp?tfnm=199942. For additional information on the law, see P. Jayaseelapandian, Understanding Money Laundering, The Hindu (India), Oct. 17, 2000, at AE-1.

84. Financial Action Task Force on Money Laundering, The Forty Recommendations 2 n. 2 (2003), available at http://www.fatf-gafi.org/dataoecd/42/43/33628117.pdf. In a report by the World Bank, Samuel Munzele Maimbo speculates upon regulatory frameworks for hawala. He offers a framework that resembles the Financial Action Task Force ("FATF") approach. It also is based on registration, record-keeping, and suspicious transaction reports. This approach "render[s] business practices more transparent without sacrificing hawala's most valuable attributes: cost-effectiveness, convenience, and regional reach." MAIMBO, supra note 7 , at 23 .

85. Id. at 2.

86. Financial Action Task Force on Money Laundering, Special Recommendations on Terrorist Financing 1 (2001), available at http://www.fatfgafi.org/dataoecd/55/16/34266142.pdf.

87. Id. at 2.

88. Financial Action Task Force on Money Laundering, Interpretative Note to Special Recommendation VI: Alternative Remittance 1 (2001) (emphasis added), available at http://www.fatf-gafi.org/dataoecd/53/34/34262291.pdf.

89. Id.

90. Financial Action Task Force on Money Laundering, The Forty ReComMENDATIONS, supra note 154 , at 4.

91. Id. at 5.

92. Financial Action Task Force on Money Laundering, Interpretative Note to

Special Recommendation VI: Alternative Remittance, supra note 158, at 1 .

93. Financial Action Task Force on Money Laundering, Interpretative Note to Special Recommendation VII: Wire Transfers 1 (2001), available at http://www.fatf-gafi.org/dataoecd/54/20/34263921.PDF.

94. U.S. Dept of the Treasury & U.S. Dept of Justice, supra note 78, at 15. The Treasury Department states the following about the Abu Dhabi Declaration on Hawala:

- Countries should adopt the 40 Recommendations of the Financial Action Task Force (FATF) on Money Laundering and the 8 Special Recommendations on Terrorist Financing in relation to remitters, including Hawalas and other alternative remittance providers.
- Countries should designate competent supervisory authorities to monitor and enforce the application of these recommendations to Hawalas and other alternative remittance providers.
- Regulations should be effective but not overly restrictive.
- The continued success in strengthening the international financial system and combating money laundering and terrorist financing requires the close support and unwavering commitment of the international community.
- The international community should work individually and collectively to regulate the Hawala System for legitimate commerce and to prevent its exploitation or misuse by criminals and others.

U.S. Deptt of the Treasury, supra note 78, at 16.

5. POSSIBLE STRATEGIES FOR CURTAILING ILLICIT HAWALA

Strategies for dealing with illicit hawala brokers fall into two categories: 1) investigative techniques and 2) economic incentives to encourage alternatives to hawala. In each case, developed states and the international community should lend assistance to states (primarily developing states) that lack the skills or funds to curtail illegal hawala.

It should be reiterated that the vast majority of customers use hawala legitimately. In many cases, it represents the only affordable method for sending and receiving money; funds which often fulfill basic needs. Without furnishing alternatives, eliminating the hawala system or excessively encumbering it would deprive many harmless people of a valuable service. Many of these people belong to ethnic communities with long cultural ties to hawala and limited experience with other remittance systems. Governments should be mindful of these factors as they investigate hawala and promote alternatives. [1]

5.1. Investigative Methods

The legal and regulatory regimes discussed in this Comment use investigative methods that rely upon registration or licensing, detailed records, and interactions with the mainstream financial system. Accordingly, the success of investigations will depend on how much hawala brokers engage in such actions. However, the hawala system, by its very nature, often eschews these actions.

Vague paper trails, lack of registration, and limited interactions with mainstream banking could doom some hawala investigations to failure. Certain hawala brokers might successfully navigate the intricacies of international commerce and remain undetected. Nevertheless, other brokers, and their customers, will have to interact with the mainstream financial system from time to time. [2] Patrick Jost, Product Development Manager of SRA International, remarked:

> Even though it is certainly possible for terrorists and other criminals to move vast amounts of money into the United States via Hawala with little or no trace, some of this money is useless unless it can be converted to an acceptable form. This necessitates a relationship between banks and hawala. This relationship is a potential vulnerability in a hawala money laundering or terrorist financing scheme, and this vulnerability should be exploited. [3]

Investigators may exploit these interactions to identify hawala brokers using trends and patterns. [4] First, the bank records of hawaladars tend to reflect significant deposit activity. [5] Second, these deposits usually come in the form of cash or checks from the local ethnic customer base. [6] Third, the checks might also list secondary account names, such as a foreign broker, or other notations, such as the recipients of the funds. [7] Fourth, the bank accounts of hawala brokers might also indicate outgoing wire transfers to financial centers such as Great Britain, Switzerland, or Dubai. [8]

Though some states might lack these investigative skills, experienced states and the international community should lend their efforts. In October 2002, FinCEN hosted a training conference on informal banking systems in Oaxaca, Mexico. [9] Officials from the United Kingdom, Pakistan, Bahrain, the International Monetary Fund, and the World Bank offered advice to the attendees. [10]

5.2. Promoting Alternative Remittance Systems to Hawala

Another strategy focuses upon promoting financial alternatives to hawala. This approach curtails illicit transactions by replacing hawala with remittance systems that share its qualities but lack its drawbacks. Alternatives could be just as fast, inexpensive, and reliable as hawala, but maintain detailed records and register with the government.

By undermining hawala by promoting alternatives, governments could placate legitimate users of hawala, yet deprive money launderers and terrorist financiers of a conduit for funds. The FATF has observed that "[i]t follows logically, that the reduced volumes of legal moneys using [informal remittance] systems might make these systems less attractive as a cover for movements of illegal funds." [11]

This strategy may be followed in tandem with the investigative methods discussed earlier. This two-pronged approach would let a government narrow

its investigative focus to the remaining hawala brokers that are not subject to oversight.

As this Comment has argued, hawala emerged in response to certain economic conditions. [12] In many countries, excessive government intervention in the economy has stunted the development of mainstream financial institutions. [13] Moreover, these financial institutions cater mostly to governments and the wealthy. [14] Compared to hawala, mainstream financial institutions cost more, [15] work more slowly, [16] and are unreliable. [17] Until hawala faces worthy competitors, it will remain popular.

Liberalization of the economy would help offset the conditions that sustain hawala. [18] This could be in the form of policies such as lower taxes on remittances, floating currency rates, and the relaxation of currency regulations and interest rates. [19]

Efforts to introduce alternatives to hawala may also be accompanied by initiatives to modernize a country's financial infrastructure. [20] This may come in the form of harmonization, the process of altering a country's practices to conform to modern international standards. [21] These standards provide guidelines on international capital flows, for instance. [22] Such reforms could help improve confidence in the mainstream banking system and draw customers away from hawala. Though developing states might lack the funds or skills to complete the harmonization process, developed states and the international community should lend their efforts. Assistance could be in the form of training and capacity building, for instance. [23]

Governments and the private sector can promote mainstream alternatives to hawala in a number of ways. [24] The Indian government approved a partnership between Western Union and the national postal service to operate in cities around the country. [25] Pakistan has enacted legislation that forces money changers to convert to exchange companies by June 30, 2004. [26] Moreover, Western Union has partnered with Pakistan's state-run National Bank to offer remittance services. [27] In Egypt, Jordan, Lebanon, and the Persian Gulf states, exchange companies offer door-to-door delivery, as do banks in the Philippines. [28] These sorts of companies are "competing today with the hawala systems in speed, efficiency of execution, settlement, and delivery of money and services."[29]

1. See PASSAS, supra note 19, at 71 ("[I]nvestigators must be trained to understand the culture of ethnic groups they look into . . .").

2. $ Id. at 68.

3. Hawala testimony, supra note 6, at 48 (statement of Patrick Jost, SRA International).

4. PASSAS, supra note 19, at 69.

5. JOST & SANDHU, supra note 2.

6. Id.

7. Id.

8. Id.

9. Financial War on Terrorism: New Money Trails Present Fresh Challenges: Hearing Before the Senate Comm. on Fin., 107th Cong. 35 (2002) (statement of Jimmy Gurule, Under Secretary for Enforcement, U.S. Department of the Treasury), available at http://finance.senate.gov/hearings/84922.pdf.

10. An Assessment of the Tools Needed to Fight the Financing of Terrorism: Hearing Before the Senate Judiciary Comm., 107th Cong. (2002) (statement of James Gurulé, Under Secretary for Enforcement, U.S. Department of the Treasury), available at http://www.treas.gov/press/releases/po3635.htm.

11. Financial Action Task Force on Money Laundering, Report on Money LAUNDERING TYPOLOGIES 1999-2000, supra note 7, at 8.

12. Hawala testimony, supra note 6, at 44 (statement of Tarik M. Yousef, Professor, Georgetown University).

13. PAssas, supra note 19, at 70.

14. Hawala testimony, supra note 6, at 44 (statement of Tarik M. Yousef, Professor, Georgetown University).

15. Ahmed, supra note 27.

16. Jost & Sandhu, supra note 2.

17. Hawala testimony, supra note 6, at 47 (statement of Patrick Jost, SRA International). See MaImbo, supra note 7, at 39 (stressing that regulation alone will not end hawala unless the need for a money transfer system is met).

18. PAssas, supra note 19, at 70.

19. Commonwealth Secretariat, Framework for Commonwealth Principles on

Promoting Good Governance and Combating Corruption (1998), available at http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/C628DA6C-4D83-4C5B-B6E8-FBA05F1188C6%7D_framework1.pdf.

20. El-Qorchi, supra note 42.

21. Hawala testimony, supra note 6, at 34 (statement of Tarik M. Yousef, Professor, Georgetown University).

22. Id.

23. World Bank, Training and Capacity Building Activities, available at http://www1.worldbank.org/finance/html/capacity_building_activities.html (last visited Mar. 1, 2005).

24. For a list of some public and private sector programs to promote formal remittance systems, see WORLD BANK, supra note 56, at 14-22.

25. Western Union, Press Trust of IndiA, Jan. 15, 2004, 2004 WL 104818608.

26. Aazim, supra note 137.

27. Banks Mobilize Expatriate Pakistanis to Send Remittances, Pak. Press Int'l Info. Serv., Jan. 23, 2003, 2003 WL 5427176; NBP Signs Deal with Western Union, supra note 137.

28. Looney, supra note 26.

29. Id.

6. CONCLUSION

The threat posed by illicit hawala might actually rise in the coming years. As governments increasingly subject mainstream financial institutions to oversight, criminal elements will likely flock to the financial systems, such as hawala, that offer the most secrecy. [1]

Since its transactions leave little or no trace, hawala will continue to challenge mainstream financial institutions and law enforcement officials. It might also force a reconsideration of existing legal and regulatory regimes on money laundering and terrorist financing. These regimes rely upon records and connections to mainstream banking that some hawala brokers eschew.

As a result, hawala will remain a viable and attractive conduit for money launderers and terrorist financiers. Even so, there are opportunities on the margins for law enforcement. Governments may exploit hawala's minimal connections with mainstream financial institutions and promote alternative remittance systems that are subject to oversight.

1. Cottle, supra note 6.